IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL FIRST APPEAL NO.577/2004
Hari Prasad Khandelwal Vs.State Bank of India

Against judgment and decree dated 01.06.2004 passed by Addl. District Judge (Fast Track), Parbatsar in Civil Original Suit No. 79/2004 – State Bank of India Vs. M/s. Khandelwal Engineering Works.

DATE OF JUDGMENT:: 24th February,2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Ashok Patel for appellant.
Mr. J.K. Chanda for respondent.

BY THE COURT:

This is a first appeal against the judgment and decree dated 01.06.2004 passed by Addl. District Judge (Fast Track), Parbatsar in Civil Original Suit No.79/2004 allowing the suit filed by the plaintiff-respondent.

Briefly stated, the facts are that respondent-plaintiff filed a suit on 11.12.2001

in the trial Court under Order 37 of the CPC for the recovery of loan amount Rs.87,764.80. The loan was advanced to the appellant-defendant under the Self-employment of Educated Unemployed Youth Scheme. The defendant-appellant did not pay the instalments, therefore, as per the terms of the loan dated 10.07.19990 the borrower i.e. defendant appellant was liable to pay interest 6.5.% below SBAR with minimum rate of 10% per annum with quarterly rest.

On filing the suit, summons were issued to the defendant-appellant for his appearance as per the provisions of Order 37 Rule 2 of the CPC and since the appellant did not appear on the date of hearing for the reason that the summons were not duly served, the trial Court ordered the respondent Bank to file fresh PF & summons.

It appears that subsequently on 13.12.2002 the trial Court recorded the ordersheet that the defendant was already served and did not put his appearance within 10

days, therefore, summon for judgment under Order 37 Rule 3 CPC was issued and finally in his absence, judgment and decree was passed on 01.06.2004 for the recovery of Rs.87,764.80 alongwith interest @ 6% per annum from the date of filing of the suit. Hence, this appeal.

The contention of the learned counsel for the appellant is that the trial Court infact has committed grave error of law inasmuch as once it was recorded by the trial Court in the ordersheet dated 09.04.2002 that the summons were not properly served then suddenly considering the service to be complete on 13.12.2002 cannot be said to be in any manner legal, just and proper service but without following the procedure prescribed under Order 37 Rule 3 CPC the judgment and decree has been passed which requires to be set aside.

The learned counsel appearing on behalf of the Bank was not in a position to controvert the submissions but submitted that power was filed on behalf of the appellant

therefore the learned trial Court has correctly appreciated the matter.

I have considered the entire matter. In the present case, the trial Court in the ordersheet dated 09.04.2002 has recorded that summons for appearance was not served and it was ordered that the respondent Bank should file fresh Pf & summons and then without there being compliance of the order passed an order on 13.12.2002 to the effect that the defendant appellant failed to appear despite service. If that is so, then issuance of summons for judgment under Order 37 Rule 3 CPC was not in accordance with law. Thus, it appears that after filing the suit straightaway without following the procedure prescribed under Order 37 the decree has been passed, which requires to be set aside and the matter requires to be sent back to the trial Court to proceed in the matter in accordance with law.

In the result, the appeal is allowed, the judgment and decree passed by the learned trial Court in Civil Original Suit No. 79/2004

(State Bank of India Vs. M/s. Khandelwal Engineering Works), is set aside and the matter is remitted back to the trial Court to try the case in accordance with law. The parties shall remain present in the trial Court on 29.03.2006 and thereafter the trial Court shall proceed to decide the matter in accordance with law.

No orders as to costs.

(SATYA PRAKASH PATHAK)J.

/jpa